

OCA 87-2207

19 May 1987

MEMORANDUM FOR: Director of Personnel
Deputy Director for Policy, Analysis &
Evaluation/OP
Chief, Administrative Law Division/OGC

STAT • FROM: [redacted] Legislation Division
Office of Congressional Affairs

SUBJECT: DoD Draft Bill Regarding Civilian Wartime
Benefits

1. Attached for your review and comment is a draft bill proposed by the Department of Defense which is designed to provide certain benefits to civilian employees during wartime. It aims to ensure that essential personnel serving under conditions threatening physical harm or imminent danger are appropriately compensated. For instance, it authorizes payment of a 50 percent premium in salary, reimbursement for medical care for injuries and payment of life insurance proceeds in certain instances.

2. The Office of Management and Budget has asked for our comments by next week. Please relay your remarks to me by 28 May 1987 so that I may respond to OMB in a timely fashion. You may telephone me on secure [redacted] if you have any questions.

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Attachment

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DEPARTMENT OF THE ARMY

WASHINGTON, D.C. 20310

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Rev.
DOD
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Honorable James C. Wright, Jr.
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed is a draft of legislation "To amend titles 5 and 10, United States Code, to provide incentives for certain essential Defense personnel serving overseas, and for other purposes."

The proposal is a part of the Department of Defense legislative program of the 100th Congress, and the Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this proposal for the consideration of the Congress. The Department of the Army has been designated the representative of the Department of Defense for this legislation. The Army recommends that the proposal be enacted by the Congress.

Purpose of the Legislation

This proposal would authorize the military departments and Defense Agencies to establish a program to insure that key Department of Defense civilian personnel continue to perform their duties during periods of armed conflict involving United States forces which threaten physical harm or provide imminent danger to their well being. The program is designed to encourage a small number of our civilian Defense employees who hold key positions overseas to stay at their duty post by providing increased pay for their performance and by eliminating disincentives to their staying on the job when all other civilians are evacuated.

As the number of civilians involved in the operation and maintenance of our increasingly complex military systems grows, military commanders must have confidence that key civilians will remain and perform their duties during periods of armed conflict. Historically, civilian employees within the Department of Defense have performed admirably during periods of hostilities. However, to insure that this loyalty and dedication continues, the Department of Defense proposes that incentives be provided to encourage key civilians to remain on duty and that the adverse consequences of their continued performance of duty in a hostile environment be reduced. The draft proposal would:

- 1) Authorize the military departments and Defense Agencies to pay a differential of pay as an incentive to an essential employee on a sliding scale not to exceed 50% of the employee's

basic pay. The amount of the differential pay would be determined by the importance of the position and the degree of threat imposed by the hostilities. However, no additional incentive pay would be authorized in any country until nonessential employees in that country had been ordered to evacuate. Post differentials and danger pay authorized under 5 U.S.C. 5925 and 5928 would supplement this pay, providing additional benefits up to 50% of the employee's basic pay, for a maximum total benefit of up to 100% of the employee's basic pay.

- 2) Provide for premium pay of one and one-half times a Federal employee's salary for overtime work in lieu of normal overtime pay that is limited to certain grades of civil service.
- 3) Remove limitations to the accumulation of leave for Federal employees who remain at their job and who otherwise would lose their leave by not taking it.
- 4) Provide reimbursement for out of pocket expenses necessary for the treatment of injuries sustained as a result of war activities and that are not otherwise covered by existing health care insurance.
- 5) Provide for the payment by the Government of the proceeds of insurance policies held by essential employees that will not cover combat related deaths because of an exclusion in the policy usually referred to as a "war clause". Contracts of insurance, other than Federal Employees Group Life Insurance, entered into after the date of enactment of this bill are excluded from this provision.

Essential employees would be defined as United States citizen employees of the Department of Defense serving overseas who are in positions determined to be essential and whose continued performance is vital to the security interests of the country. Incentive pay under this proposal would be paid under wartime conditions that provide a threat of physical harm or imminent danger to the person concerned of such an extent that the Secretary or agency head concerned fears the subject employees may leave their posts of duty. The employee would know in advance that the duty to be performed was subject to the incentive program because the employee would acknowledge, in writing, the obligation to stay. These incentives would be used only when there is a need to retain employees on the job in unsafe areas from which other noncombatants would be evacuated.

Such incentives have ample precedent. For example, members of the uniformed services receive special "hostile fire" pay (37 U.S.C. 310), and certain civilians can receive a danger pay allowance (5 U.S.C. 5928). Secondary insurance coverage to fill the gap for insurance policies with "war clauses" for these key civilian employees provides the peace of mind that if they are killed their families will have financial security.

Cost and Budget Data

The enactment of this proposal will cause no apparent increase in the budgetary requirements of the Department of Defense. The incentive pay will only be an expense in time of grave emergency when these essential employees are needed most.

Sincerely,

Enclosures